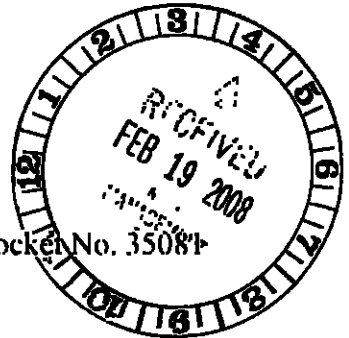


BEFORE THE
SURFACE TRANSPORTATION BOARD

Canadian Pacific Railway Company, *et al* - Control -
Dakota, Minnesota & Eastern Railroad Corp., *et al*

Finance Docket No. 35081



RESPONSE TO ENVIRONMENTAL COMMENTS

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Dated February 19, 2008

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SURFACE TRANSPORTATION BOARD

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RESPONSE TO ENVIRONMENTAL COMMENTS

Applicants, Canadian Pacific Railway Company ("CPRC"), Soo Line Holding Company ("SOO Holding"); Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"); and Iowa, Chicago & Eastern Railroad Corporation ("IC&E") (collectively, "Applicants"), submit this response to the comments regarding the Board's preliminary determinations regarding environmental review in this matter filed by (1) the Sierra Club and the Sierra Club of/Du Canada ("Sierra Club"); (2) the Mayo Clinic ("Mayo"); (3) the City of Dubuque, Iowa ("Dubuque"), and (4) the Committee for a Safer Brookings ("CSB"). As demonstrated below, the Board's preliminary determination regarding the appropriate environmental review process for this proceeding complies with the National Environmental Policy Act ("NEPA") and will ensure that environmental impacts of both the acquisition of DM&E and IC&E (collectively "DME") by SOO Holding and CPRC (collectively "CPR") and the transport of PRB coal trains over the IC&E and CPR lines are appropriately considered.

I. Background

In this matter, Applicants seek Board approval of the acquisition of control of DME by SOO Holding (a wholly-owned subsidiary of CPRC). In 2006, the Board granted DM&E authority to construct and operate 282 miles of new railroad lines into the Power River Basin

("PRB")¹ In a separate proceeding, the Board approved DM&E's acquisition of the rail lines now operated by the IC&E from the former Iowa and Minnesota Rail Link.² In that proceeding, as here, the Board was faced with the question of how to examine the environmental impacts of potential changes in train traffic resulting from the routing of PRB coal trains on IC&E's lines following its acquisition by DM&E. The Board concluded that, consistent with its obligations under NEPA, it would approve the acquisition of IC&E by DM&E while imposing a condition prohibiting the routing of PRB coal trains over IC&E lines until the Board evaluated the potential impacts of such new traffic.³ This condition remains in effect, and PRB coal trains cannot run over IC&E lines until an Environmental Impact Statement ("EIS") is prepared.⁴

In their Control Application, Applicants have proposed to extend this condition to prohibit PRB coal traffic over both IC&E and CPR lines until the Board (and the public) have an opportunity to consider the potential environmental impacts of such future train movements. At the present time, Applicants have not yet decided to build and operate the proposed PRB line. Applicants explained that the project will not proceed unless and until three preconditions are satisfied: (1) the necessary land is assembled and acquired, (2) agreements with utilities for the transportation of PRB coal are in place, and (3) DM&E obtains access to the PRB mines. See Application at 3. In light of this uncertainty (and, in particular, the absence of greater knowledge

¹ See *Dakota, Minnesota & Eastern RR Corp. Construction Into The Powder River Basin*, STB Finance Docket No. 33407 (Jan. 28, 2002); reversed and remanded in *Mid-States Coalition for Progress v. STB*, 345 F.3d 520 (8th Cir. 2003), *Dakota, Minnesota & Eastern RR Corp. Construction Into The Powder River Basin*, STB Finance Docket No. 33407 (Feb. 13, 2006), upheld in *Mayo Foundation v. STB*, 472 F.3d 545 (8th Cir. 2006) (hereinafter, collectively, "*DM&E PRB Construction*").

² See *Iowa, Chicago & Eastern RR Corp. – Acquisition and Operation Exemption – Lines of I&M Rail Link*, STB Finance Docket 34177 (July 22, 2002).

³ See *Iowa, Chicago & Eastern Railroad Corporation – Acquisition and Operation Exemption – Lines of I&M Rail Link, LLC*, Finance Docket No. 34177 (July 22, 2002), as modified (October 18, 2006) (hereinafter "*IC&E Acquisition*").

⁴ See STB Finance Docket No. 34177, Memo from Victoria Rutson, Chief SLA, to The Board (Jan. 26, 2007), Board Order of January 30, 2007.

regarding the likely shippers, routings and destination points for the PRB coal to be carried by DM&E), Applicants reasoned that any environmental review of the PRB traffic over the IC&E and CPR lines would be speculative and of limited value. The Board, in its December 27, 2007 Decision, agreed and preliminarily adopted two conditions proposed by Applicants

1. Applicants may not transport coal unit trains originating on the new rail line approved for construction in DM&E PRB Construction over lines currently operated by IC&E and/or CPR until the Board has prepared an Environmental Impact Statement, and has issued a final decision addressing the environmental impacts of such coal operations and allowed such operations to begin
2. Prior to commencing any construction of the new rail line approved in DM&E PRB Construction, Applicants shall notify the Board of Applicants' intent to begin construction, and shall submit to the Board reasonably foreseeable projections regarding the movement of DM&E PRB coal traffic on the rail lines of IC&E and/or CPR, so that the environmental review can begin

See Dec 27 Decision at 15 The Board concluded that this approach would ensure that any environmental impacts associated with the PRB traffic would be fully evaluated, as required by NEPA, before coal train operations over IC&E and CPR lines begin, thus maintaining the environmental status quo.

The four commenters challenge the Board's preliminary approach on several grounds.⁵ Sierra Club argues that the preliminary approach would preclude evaluation of the cumulative impacts of non-coal and PRB coal traffic over the IC&E and CPR lines and would improperly segment consideration of these issues. *See* Comments of Sierra Club at 2-5 Sierra Club also claims that the Board must (1) consider extraterritorial environmental impacts in Canada, (2) analyze impacts on historic resources under the National Historic Preservation Act ("NHPA"), and (3) engage in consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act ("ESA") *Id.* at 5-10

⁵ In addition to these four commenters, the U.S. Department of Transportation filed comments supporting the Board's preliminary determinations regarding environmental review

Mayo argues that the mitigation measures imposed in the Board's approval of the PRB project do not address the "potential danger resulting from a substantial increase in the movement of hazardous materials" through Rochester and suggests, without any supporting data, that the "expected" increase in ethanol shipments resulting from CPR's acquisition of control of DME requires immediate review. Mayo also argues that the Applicants have not provided sufficient detail about the \$300 million to be provided by CPR over the next several years to rehabilitate DME's lines, although Mayo does not explain why this alleged deficiency requires a change in the Board's preliminary approach to environmental review. In addition, Mayo claims that Applicants' assertion that no decision has been made to proceed with the PRB project is inconsistent with actions being taken by DM&E to acquire land in South Dakota and Wyoming. Finally, Mayo suggests that cumulative impacts of the transaction, the PRB coal shipments and other matters before the Board all need to be evaluated before the Application is approved.

Dubuque states that it does not oppose the Board's preliminary approach to environmental review, but suggests that the Board should limit any increase in train traffic over the IC&E to five to eight trains per day until the environmental review is completed. *See* Comments of Dubuque at 4. (Under the approach preliminarily adopted by the Board, Applicants could not operate any PRB coal trains over the IC&E or CPR lines until a supplemental environmental review is conducted.) Finally, CSB expresses concerns about the location of the DM&E lines in light of the growth of Brookings over the last 15 years. CSB requests that its concerns be considered as part of the Board's review of the Control Application.

Applicants respond to these comments below

II. The Board's Preliminary Approach Is Lawful

The Board's preliminary decision to defer further review of the potential environmental effects of the movement of PRB coal trains over the lines of IC&E and CPR, while prohibiting such train movements until completion of a supplemental EIS, is fully consistent with NEPA. Sierra Club and Mayo's arguments that this approach will prevent consideration of cumulative impacts or will unlawfully segment the environmental analysis are based on a mistaken characterization of "action" requiring Board review. Sierra Club and Mayo also fail to recognize that the Board's preliminary approach simply defers, and does not avoid, the environmental analysis they request.

NEPA requires environmental review of "major federal actions" significantly affecting the environment. 42 U.S.C. § 4332(C). The only "action" requiring Board review here is the acquisition of corporate control of DME by SOO Holding (and, indirectly, by CPRC), and it is the environmental impacts resulting from that control transaction that NEPA requires the Board to examine here. As Applicants have demonstrated (and no commenter has refuted), the control transaction will not result in an increase in train traffic or rail yard activity that exceeds the Board's thresholds, and thus the transaction is categorically exempt from further environmental review under NEPA and the Board's rules. *See* 49 C.F.R. § 1105.7(e)(5). Application at 20-23.

Sierra Club does not dispute these facts. Instead, it argues that there are two "phases" of the transaction – one involving PRB coal shipments and one involving all other commodities. *See* Sierra Club Comments at 1-2. This characterization of the proposed transaction and the issues before the Board is wrong. Neither DM&E's authorization to construct a rail line into the PRB, or its the right to transport PRB coal over the lines of DM&E or IC&E (or, for that matter, any assets of DM&E or IC&E) are being transferred to CPR. DM&E's existing authority to

construct and operate the PRB project is not presently before the Board, nor is the issue of the transport of PRB coal trains to locations beyond DM&I's lines. Rather, CPRC (through SOO Holding) is purchasing the shares of DM&I, and it is that acquisition of control which the Board is reviewing. Both Sierra Club and Mayo confuse the issue by failing to identify clearly the "action" which triggers NEPA review in this case. The only environmental issues that must be considered before Board approval of the merger are those directly resulting from the control transaction itself.

Accordingly, the Board's preliminary determination to continue deferring consideration of an issue unrelated to the proposed control transaction – the possible future movement of PRB coal over the IC&I and CPR lines – is both appropriate and lawful. As the Board has recognized, the lack of information about the routing of such PRB coal trains would make any examination of their impacts speculative and of limited value at this time. In such circumstances, as the Board explained in *IC&E Acquisition*, it is both sensible and lawful to defer consideration of these issues until better information is available; the routing prohibition suggested by Applicants and preliminarily adopted by the Board will preserve the environmental status quo.⁶

Moreover, deferring that analysis to a later date will not preclude consideration of any purported "cumulative" impacts of PRB coal traffic and the projected increase in rail traffic and

⁶ See *IC&I Acquisition* at 16-18 (citing, *inter alia*, *Sierra Club v. FERC*, 754 F.2d 1506, 1509-10 (9th Cir. 1985)), *City of Riverview v. Surface Transportation Board*, 398 F.3d 434 (6th Cir. 2005) (upholding decision not to evaluate the environmental impacts of adding river barge service to an intermodal facility authorized by Board because there were no established plans to add such barge service and impacts of such service would be studied at a later time), see also *Crouse Corp. v. ICC*, 781 F.2d 1176 (6th Cir. 1986) (upholding decision to defer consideration of impacts of proposed construction of facilities because such construction was not part of merger being considered by ICC), *Colorado River Water Conservation District v. United States*, 593 F.2d 907, 909-910 (10th Cir. 1977) (no environmental review required of contract for transportation of water when no plan existed for such transport; consideration of impacts would be speculative, and subsequent environmental review would occur before transport of water).

activity resulting from the control transaction, nor will it cause any future review to be “segmented.” When (and if) it is necessary to prepare a supplemental EIS on the PRB coal traffic running over the IC&E and CPR lines, that analysis will necessarily take into account any changes in non-coal traffic that have resulted from the control transaction. Indeed, performing the supplemental analysis at a later date will enable the parties to base an analysis of “cumulative” effects on the actual changes in non-coal traffic levels that occur following consummation of the proposed transaction.⁷ Simply put, this is not a case where there will be no analysis of cumulative impacts, rather, such effects will be fully considered when (and if) the PRB project goes forward.

For similar reasons, Sierra Club is mistaken to argue that the preliminary approach will result in “segmentation” of review. Contrary to Sierra Club’s assertion, there are not two “phases” of a single action or project that need to be considered together. The Council on Environmental Quality’s (“CEQ”) regulations regarding segmentation provide that “[p]roposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” 40 C.F.R. § 1502.4(a). For two reasons, nothing in the Board’s preliminary approach is contrary to this requirement.

First, CPR’s acquisition of control of DME and the potential future transportation of PRB coal over the IC&E and CPR lines are not “related closely enough to be, in effect, a single course of action.” As explained by CEQ, actions are connected if they

⁷ Mayo’s suggestion that the impacts of Canadian National Railway’s acquisition of control of the Elgin, Joliet & Eastern Railroad will need to be considered as part of the cumulative analysis is premature. If and when an EIS is prepared for the transport of PRB coal, issues relating to rail traffic in Chicago (assuming that PRB coal will be routed through Chicago) will be examined. That review may or may not include impacts of traffic changes resulting from the CN-LJ&E transaction, assuming it is approved. In any event, Mayo fails to explain how the issue of rail traffic in Chicago affects its interests in this matter.

- 1 Automatically trigger other actions which may require environmental statements.
- 2 Cannot or will not proceed unless other actions taken previously or simultaneously; or
3. Are interdependent parts of a larger action and depend on the larger action for their justification.

Id. at 1508 25(a)(1) None of these circumstances exists here. The proposed control transaction will not “automatically trigger” the construction of the PRB line or the movement of PRB coal on the lines of IC&E or CPR. Nor will it trigger the need to conduct a supplemental EIS regarding the PRB traffic if the line is built; that requirement already exists. Moreover, neither the proposed control transaction nor the PRB project are dependent on the other taking place, nor are they interdependent parts of some larger action. Accordingly, the two actions are not related (within the meaning of the CEQ regulations) and do not require integrated review as demanded by Sierra Club.

Second, if and when a supplemental EIS is prepared regarding the movement of PRB coal traffic over the IC&E and CPR lines, the baseline on which that evaluation will be made will take into account any increased rail traffic or yard activity resulting from the control transaction. That is, if the proposed transaction is approved and the Board subsequently undertakes an environmental review of the PRB coal train issue, that review will necessarily consider the non-coal traffic impacts that have resulted from the control transaction. *Cf. Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.20 (1976) (“Should contemplated actions later reach the state of actual proposals, impact statements on them will take into account the effect of their approach upon the existing environment”) Because a single EIS will address both issues (or both “phases of the project” as Sierra Club erroneously characterizes the issues), no improper segmentation will occur.

Indeed, Sierra Club's and Mayo's concerns are mystifying given that the scope of the analysis of PRB coal train impacts that Applicants have proposed and the Board has preliminarily adopted will be far broader and more comprehensive than what would have occurred in the absence of the proposed transaction. The condition imposed in *IC&E Acquisition* (and currently in force) only prohibits the transport of PRB coal over the IC&E lines until an analysis of the impacts of such train movements is completed. Nothing in the routing prohibition imposed in *IC&E Acquisition* would preclude DM&E from proceeding with the construction and operation of the PRB project and routing its coal trains via railroads other than IC&E (including CPR).⁸ The condition preliminarily adopted by the Board in this proceeding would prohibit PRB coal train traffic over both IC&E and CPR lines, while ensuring that the Board evaluates the impacts from both IC&E and CPR PRB coal traffic.

The Board's preliminary approach satisfies its NEPA obligations. Sierra Club and Mayo's arguments are premised on the mistaken assumption that no EIS addressing the issues they raise will ever be prepared. If the PRB project becomes a reality, a supplemental EIS addressing the impacts of PRB coal train traffic on the lines of IC&E and CPR, as well as the underlying conditions resulting from the proposed control transaction, will be prepared. Nothing more is required.

III. The Potential Increase in Ethanol Shipments, Even Considering Organic Growth Not Directly Related to the Proposed Transaction, Will Not Exceed the Board's Thresholds.

Although Mayo complains about the purported "substantial increases in traffic" through Rochester resulting from the proposed transaction or as a result of inherent growth on DM&E

⁸ Of course, DM&E would have to notify the Board and provide information for the Board to begin the process of preparing an EIS regarding the transport of PRB coal trains over the IC&E lines.

lines,⁹ it presents no independent data to support its suggestion that these increases will actually occur or will trigger a requirement that the Board prepare an EIS prior to authorizing CPR to acquire control of DME. Instead, Mayo misconstrues or ignores the substantial traffic data Applicants submitted in support of the Application. These data show that not only is there no projected substantial increase in traffic through Rochester, but also the Board's environmental thresholds will not be exceeded even accounting for both the traffic increases projected as a result of the proposed transaction and "organic" growth in Applicants' traffic that is likely to occur whether or not the proposed transaction takes place. Neither Mayo, nor any other commenter, presents any information or data to show that Applicants' projections are faulty or incorrect, and no EIS is required now to assess the impacts from the small volumes of increased traffic resulting from the proposed transaction

As explained in the Application, the Applicants project no more than one additional train per day along any segment of the DME-CPR system by 2012. *See* Application at 21. Mayo correctly notes that Applicants anticipate additional organic growth in traffic over DME even in the absence of the proposed transaction. *See* Mayo Comments at 5. Even if this organic growth is taken into account (and added to the increased traffic resulting directly from the proposed transaction), however, there would still be only a small increase in traffic, well below the environmental thresholds in the Board's regulations. Application at 21. Applicants' estimates are supported by the Operating Plan and the Verified Statement of Ray Foot submitted with the Application, as well as the workpapers of Mr. Foot. *See* Attachment 1, Workpaper CPR-DME-RF-HC-000644 (filed under seal)

⁹ *See* Mayo Comments at 1

Mayo not only mischaracterizes the figures presented in the Operating Plan and Mr. Foot's Verified Statement, it also mistakenly assumes that all this traffic, including anticipated growth in ethanol shipments, will be routed over DM&E's line through Rochester, MN. See Mayo Comments at 5-6. In fact, all of the anticipated organic growth in ethanol traffic described by Mr. Foot will move either west (to interchanges with BNSF) or via IC&E's lines to the Chicago gateway. None of that traffic will be transported through Rochester over DM&E's lines.

In any event, Mayo's concerns about safety in Rochester are misplaced. Given CPR's well-established commitment to safety and its historic safety performance, the proposed transaction is very likely to improve the safety of train shipments through Rochester (and elsewhere on the DME system). Moreover, comments regarding safety issues are best directed to the Safety Integration Plan ("SIP") submitted by the Applicants on February 4.¹⁰

In short, Mayo offers nothing but speculation and mischaracterization to create the fiction of huge quantities of "unsafe" shipments of ethanol through Rochester. A careful examination of Applicants' traffic projections – estimates which no commenter has provided any basis to question – demonstrates that Mayo's concerns are unfounded and do not warrant modification of the Board's preliminary approach to environmental review.

IV. The Board Has Already Exhaustively Examined the Environmental Impacts of Constructing the PRB Extension and the Transportation of PRB Coal Over the DM&E Lines.

Mayo and CSB appear to view the proposed transaction as an opportunity to reopen issues that were fully heard and finally decided in connection with the Board's authorization of

¹⁰ Mayo's concerns about the inability to comment on the SIP are rendered moot by the Board's Decision of February 5 which, at the urging of the South Dakota Department of Transportation and Applicants, specifies a schedule for submission of comments regarding the SIP.

the PRB project. Those issues, and the mitigation measures imposed to address them, have been the subject of exhaustive review by both the Board and the U S Court of Appeals for the Eighth Circuit. The original PRB project is not at issue in this proceeding.

Mayo alleges that DM&E's ongoing efforts to secure necessary right-of-way in South Dakota and Wyoming belie the Applicants' statements that no decision has yet been made to construct or operate the PRB project. See Mayo Comments at 10. In making this assertion, Mayo conveniently ignores the testimony of CPRC's President, Mr. Green, who described three preconditions that must be satisfied before the PRB project can be constructed. (1) land acquisition, (2) contracts with utilities for PRB coal, and (3) agreements on mine access. See Application at 3. DM&E's actions to secure land in South Dakota and Wyoming simply reflect its attempt to satisfy the first of these preconditions for construction and operation of the PRB line. Unless the necessary land can be acquired, no construction can possibly take place. DM&E's actions are not inconsistent with the Applicants' position that no final decision has yet been made to go forward with the PRB project.

Mayo's and CSB's complaints about mitigation measures imposed in connection with the Board's prior authorization of the PRB project are misplaced. Mayo argues that the existing mitigation measures are inadequate because they do not address Mayo's own faulty estimates of increased ethanol traffic through Rochester. See Mayo Comments at 3-4. Similarly, CSB does not specifically challenge the Board's preliminary approach to environmental review, but suggests in its comments that it is unsatisfied with existing mitigation measures to address PRB coal issues. The mitigation measures imposed in *DM&E PRB Construction*, however, are not at issue here, and Mayo and CSB have already had a full and fair opportunity to comment upon and seek review of those measures.

In short, the Board should reject the commenters' invitation to revisit issues that have been exhaustively reviewed and finally decided in *DM&E PRB Construction*. The only issue here is the propriety of the Board's preliminary approach to environmental review of the issues raised by the proposed acquisition of DME by CPR.

V. The Other Comments Have No Merit

Sierra Club and Dubuque raise several other points which can be addressed quickly.

First, Sierra Club claims that NEPA requires the Board to consider "extraterritorial effects" of the proposed transaction in Canada. See Sierra Club Comments at 6. Although Sierra Club is vague about what impacts it believes should be evaluated, it discusses two different categories of purported effects: (1) effects in Canada of activities occurring inside the United States, and (2) effects in Canada of activities occurring in Canada. NEPA does not apply to either situation. The cases cited by Sierra Club and others make it clear that NEPA does not apply to the impacts of activities occurring in the United States in areas under the sovereign control of Canada or some other country.¹¹ Sierra Club's argument that the Board should examine the impacts in Canada of activities taking place in Canada is without precedent and fails for the same reason. In the (unlikely) event that the proposed transaction were to result in environmental impacts in Canada, the Board has no authority to examine them because those impacts would be within the exclusive jurisdiction of Canadian authorities. NEPA does not have extraterritorial application here. In any event, because the proposed transaction would not result in traffic increases sufficient to trigger a requirement that the Board prepare environmental

¹¹ See Sierra Club Comments at 6 n 3 (citing *Environmental Defense Fund v. Massey*, 986 F.2d 528-29 (D.C. Cir. 1993) (NEPA applies "extraterritorially" only in sovereignless areas over which the United States has some control)), see also *Consejo de Desarrollo Económico de México v. United States*, 438 F. Supp. 2d 1207, 1235 (D. Nev. 2006) (NEPA does not apply to effects in Mexico of canal project in United States), *Born Free USA v. Norton*, 278 F. Supp. 2d 5, 20 (D.D.C. 2003) (NEPA does not apply extraterritorially in areas under the sovereign control of another nation).

documentation in this case, the Board is not obligated to prepare an EIS regarding the effects of the transaction – foreign or domestic.

Second, Sierra Club incorrectly argues that the Board's preliminary approach does not address compliance with NHPA or the ESA. CPR's acquisition of control of DME does not implicate NHPA because the acquisition itself (and the Board's approval of that acquisition) will not affect any historic structures. Indeed, Sierra Club fails to identify any impacts from the transaction to historic structures that would conceivably trigger NHPA. The ESA consultation requirement also does not apply to the Board's review of the control application. The ESA requires consultation only where there is "reason to believe that an endangered species or a threatened species may be present in the area affected by [a] project and that implementation of such action will likely affect such species." 16 U.S.C. § 1636(a)(3). Sierra Club presents no evidence, because there is none, that CPR's acquisition of control of DME will affect any threatened or endangered species. Sierra Club's suggestion (Comments at 8) that the acquisition provides an opportunity to revise and expand the ESA evaluations conducted in the Board's prior proceedings approving the PRB project is misplaced, because, as explained previously, the PRB project is not at issue here.

Third, although Dubuque does not challenge the Board's preliminary approach,¹² it requests that the Board restrict the number of trains running through Dubuque to an additional five to eight trains above current levels. This restriction is unnecessary and inappropriate. To justify its request, Dubuque relies on estimates of increased PRB coal train traffic prepared by DM&F in 2006 when it sought to lift the routing prohibition imposed in *IC&E Acquisition*. That estimate, which focused only on projected numbers of PRB coal trains running on the IC&E

¹² "Dubuque would like the environmental studies and necessary mitigation completed before the restriction prohibiting PRB coal on the former IMRI rail line is lifted." Dubuque Comments at 4.

lines, has nothing to do with Applicants' estimates of only a small increase in non-PRB traffic resulting from the merger. Dubuque is attempting to bootstrap an estimate of PRB coal train traffic prepared in a different context to justify restricting all train traffic, not just PRB coal trains. Although Applicants have estimated only a small increase of traffic through Dubuque, it would be unreasonable and unwarranted for the Board to impose any restriction on non-PRB coal trains.

VI. Conclusion

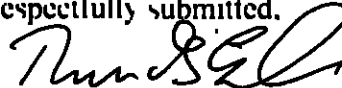
For the reasons above, Applicants urge the Board to affirm its preliminary approach to environmental review. Commenters have provided neither facts nor legal argument to support their claims that deferring a supplemental EIS addressing the future movement of PRB coal traffic over the IC&E and CPR lines until it is clear that the PRB line will be built, while prohibiting such movements pending completion of a supplemental EIS addressing such movements, is inappropriate or unlawful.

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Applicants' Response to Environmental Comments to be served by first class mail, postage prepaid, this 19th day of February 2008, on all parties of record and the following persons as specified in the Board's Decision dated December 27, 2007:

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